

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3917 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUNI. CORPN. OF AHMEDABAD

Versus

K C MEDICAL STORES

Appearance:

MR BK BHATT for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/10/97

ORAL JUDGEMENT

1. This special civil application has been directed by the Municipal Corporation of the city of Ahmedabad against the judgment dated 12-10-1984 of the Small Cause Court No.2 of Ahmedabad in M.V. Appeal No.1021/84 under which the Court has worked out the Gross Rateable Value of the disputed premises at Rs.876/-. While fixing this G.R.V. the Court has taken the letting rate for the ground floor at 35 paise per sq. ft. and letting rate

at 15 paise per sq. ft. of the loft. This matter pertains to the year 1983-84.

2. The respondent herein, is the tenant in the premises bearing survey No.3529/3278/A/1 in ward Shahpur II-B, Ahmedabad. The petitioner-Corporation fixed the gross rateable value of the said premises for the year 1983-84 at Rs.2796/-. This gross rateable value has been fixed on the basis of what the respondent was paying rent of the premises to its landlord. This order has been challenged by the respondent by filing an appeal before the Small Causes Court which was came to be allowed under the impugned order.

3. The learned counsel for the petitioner submitted that the learned Court below has without giving any reason whatsoever fixed the letting rate for the ground floor at 35 ps. per sq. ft. and that of loft at 15 ps. per sq. ft. The decision of the petitioner Corporation regarding fixation of the gross rateable value of the premises in dispute has been made on the basis of the admitted letting value of the said premises by the respondent himself. The respondent was paying the rent at the said rate to the landlord. While reversing that decision, the Court has to give out its reasons but in the present case the Court has acted arbitrarily.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner and perused the special civil application and the impugned order.

5. The order impugned in this special civil application is appealable under section 411 of the Bombay Provincial Municipal Corporation Act and the petitioner-Municipal Corporation herein has made a deliberate wrong statement of fact that it has no other alternative and equally efficacious remedy in the matter except to approach this court by way of this petition under Article 227 of the Constitution of India. The Corporation is a statutory body and it is not expected from it to make such a wrong statement. At one point of time, I thought of to reject this petition only on the ground that the petitioner-Corporation has made a wrong statement but looking to the fact that this petition has been admitted in the year 1985 and interim relief has been granted by this Court and is pending for all these years and above that, the matter pertains to the assessment and recovery of property tax which amount is used by it for the public welfare, I am not adopting that course. However, the Corporation should take the care of

the fact that there may not be recurrence of such things in the future. Where against the impugned order the Corporation has a remedy of statutory appeal then that remedy has to be first availed of and the petition should not have been filed. The remedy of appeal would have been cheaper also and the Corporation would have taken the care that the people's money is not unnecessary wasted in the litigation. Be that as it may.

6. I find sufficient merits in the contention of the counsel for the petitioner. From the judgment impugned in this special civil application of the learned Court below I find that it has not given any reason whatsoever in support of its finding that the letting rate for the ground floor to be taken at 35 ps. per sq. ft. and of the loft at the rate of 15 ps. per sq. ft.. The learned Small Cause Court No.2 was dealing with an appeal and before it decides to reverse the order of the taxation authorities it has to give its reasons not to accept that order. The learned Court below made an interference with the order only by saying that after hearing the parties and taking into consideration the area, user and locality, the reasonable and expected letting rate for the ground floor is fixed at 35 ps. per sq. ft. and that of loft at 15 ps. per sq. ft.. It is not a reasoned order. This matter pertains to the property tax and while dealing with such matters, the Court should take the notice of the fact that the tax payers normally adopts all the tactics to evade the tax. In the present case, the order of the petitioner cannot be said to be perverse or arbitrary on the face of it. It is based on the very important fact, that is the rent which the respondent is paying of this premises to the landlord. If the learned Court below was not in agreement with the judgment of the taxation authorities then it is expected of it to record the strong reasons for reversion of the findings. As stated earlier in the present case, no reason whatsoever has been recorded to reverse the findings of the taxation authorities.

7. In the result, this special civil application succeeds and the same is allowed. The order of the Small Cause Judge, Court NO.2 at Ahmedabad dated 12-10-1984 in M.V. Appeal No.1021/84 is quashed and set aside. Rule made absolute.

zgs/-